

V I S T A N C I A C O U N C I L

# AGENDA



Thursday, November 30, 2006

+ Back Print

## Economic Growth & Redevelopment Services RECOMMENDATION FOR COUNCIL ACTION

ITEM No 11

**Subject** Approve an ordinance authorizing the execution of an agreement with Ballet Austin, Inc providing for the reimbursement of public streetscape improvement costs in an amount not to exceed \$453,055, reimbursement of development fees in an amount not to exceed \$165,877, the reduction of City license agreement annual fees, and the waiver of fiscal requirements for the public streetscape improvements, for a total amount not to exceed \$618,932

**Amount and Source of Funding** Funding in the amount of \$618,932 in cost reimbursements \$453,055 is available in FY07 budget of the Neighborhood Planning & Zoning Department, \$163,627 in revenue to be reimbursed for the Watershed Protection and Development Review Department, and \$2,250 in revenue to be reimbursed for the Austin Water Utility

**Fiscal Note** There is no unanticipated fiscal impact A fiscal note is not required

### Additional Backup Material

(click to open)

- Ordinance
- Exhibit A
- Exhibit B, C and D

**For More Information** Fred Evins, Redevelopment Project  
Manager / 974-7131

Ballet Austin (the "Ballet") is remodeling an existing industrial building at 501 West 3rd Street to consolidate its operational functions Ballet's new dance education center will be the arts and entertainment cornerstone of the 2nd Street District surrounding City Hall (a related item appears on this agenda regarding a chilled water service agreement between Ballet and Austin Energy)

The City will fund the cost of public streetscape improvements along 3rd Street, in the block face abutting Ballet's dance education center, consisting of widened sidewalks with pavers, street trees, benches, bike racks, trash bins and light pole bases Great Streets streetscape improvements are being constructed along 3rd Street in connection with AMLI's residential/retail development on Block 22 The Novare Group will also be improving the 3rd Street streetscape adjoining its 360 residential/retail project and the remodeled Austin Music Hall Ballet has agreed to design and construct, the 3rd Street streetscape improvements abutting its property in conjunction with development of its dance education center Installation of Great Streets streetscape amenities in the Ballet block will provide a vital pedestrian link between the 2nd Street District and new developments in the Austin Music Hall area, and beyond to the Seaholm District

Ballet's dance education center will bring approximately 1000 students weekly to the 2nd Street District, often accompanied by parents who will remain in the area for the duration of classes Ballet is a catalyst for cultural tourism 19% of Ballet subscribers come from outside the City of Austin, while 30% of Ballet's single ticket audience comes from outside the City

Ballet's dance education and outreach initiatives are well established The new facility will allow Ballet to

serve 30% more students through its Academy classes and 50% more children and families through its CORE (Community OutReach and Education) initiatives. The dance education center will also provide a variety of multi-function facilities available for use by the entire community.

This Council action would allow the City to enter into an Agreement with Ballet Austin consistent with the agreement attached, having key terms summarized as follows:

- Ballet will provide complete design, engineering, construction and project management services for certain public streetscape improvements consistent with the City's Great Streets program. City cost participation not to exceed \$453,055.
- The City will reimburse fees associated with development of the dance education center and streetscape improvements project in a total amount not to exceed \$165,877. The fees subject to reimbursement are as follows:
  - o Temporary use of right-of-way permit fees in an amount not to exceed \$102,665
  - o Right-of-way excavation permit fees in an amount not to exceed \$5,030
  - o Driveway permit fees in an amount not to exceed \$160
  - o Site plan fees in an amount not to exceed \$330
  - o Building plan review fees in an amount not to exceed \$5,003
  - o Building permit fees, including mechanical, plumbing and electrical permit fees, in an amount not to exceed \$26,364
  - o Austin fire department final inspection fees in an amount not to exceed \$55
  - o Temporary certificate of occupancy fee in an amount not to exceed \$750
  - o Sign review and permit fees in an amount not to exceed \$345
  - o License agreement application fee in an amount not to exceed \$425
  - o Construction inspection fees for infrastructure in the right-of-way in an amount not to exceed \$22,500
  - o Water meter capital recovery fee in an amount not to exceed \$500, and
  - o Water meter inspection fee in an amount not to exceed \$1,750
- To receive the City streetscape improvements cost reimbursements and development fee reimbursements, Ballet shall complete the project within three years.
- Ballet agrees to occupy and use a facility at 501 West 3rd Street as its headquarters, rehearsal, educational and administrative facility for a period of at least 20 years.
- The City will charge an annual license agreement fee of \$1 for project building elements constructed in the right-of-way.
- The City waives fiscal posting requirements for the public streetscape improvements.
- In the event the City commences charging for public parking in the City Hall parking garage, the City will accept 2-hour daytime parking validations for Ballet visitors in lieu of parking fees.
- Solid Waste Services' contractor will provide waste management services for disposal of construction debris at no charge to Ballet.

**ORDINANCE NO.**

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH BALLETT AUSTIN, INC., FOR REIMBURSEMENT OF COSTS OF STREETSCAPE IMPROVEMENTS, REIMBURSEMENT OR WAIVER OF CERTAIN CITY DEVELOPMENT FEES AND CHARGES, AND OTHER MUTUAL BENEFITS, FOR THE BALLETT AUSTIN PROJECT AT 501 WEST 3<sup>RD</sup> STREET, IN A TOTAL AMOUNT NOT TO EXCEED \$618,932.00.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN.**

**PART 1.** The City Council finds that

- (A) Ballet Austin, Inc (“Ballet Austin”) is an established cultural entity with consistently high scores under the City’s Cultural Contracting program in the areas of artistic excellence and innovation, administrative capability, and economic, cultural, and social impact
- (B) Ballet Austin has proposed an adaptive remodel of an existing industrial building in approximately 34,000 square feet of space, at 501 West 3<sup>rd</sup> Street in downtown Austin, to be used as a headquarters, administrative, educational and rehearsal space for Ballet Austin. Ballet Austin will construct additional streetscape improvements consistent with the City’s “Great Streets” program
- (C) Ballet Austin will be able to serve more students in its new facility through Ballet Austin Academy and more children and families through Ballet Austin’s CORE (Community OutReach and Education) programs, expanding the range and scope of Ballet Austin’s reach into the community
- (D) The City wishes to promote and encourage the location of recognized arts and cultural entities in the vicinity of City Hall in order to create a significant cultural presence in the downtown area, which the Council determines is a public purpose of the City. The proposed agreement between the City and Ballet Austin will further this public purpose, and Ballet Austin has agreed to maintain their headquarters at 501 West 3<sup>rd</sup> Street for at least 20 years
- (E) The City has evaluated the proposal submitted by Ballet Austin and has determined that the project will benefit the downtown area and further the public purpose of redeveloping the 2<sup>nd</sup> Street District by adding cultural arts,

1 entertainment, outreach and educational opportunities The proposed  
2 streetscape improvements within the public right of way will benefit the  
3 public, and the coordination of the streetscape improvements with the  
4 remodel of the structure will minimize disruption to the public

5 (F) The City and Ballet Austin desire to enter into an agreement for cost and fee  
6 reimbursements and other mutual benefits related to the project  
7

8 **PART 2.** The City Manager is authorized to execute an agreement with Ballet Austin,  
9 Inc in substantially the form attached as Exhibit A, providing for reimbursements and  
10 waivers of certain streetscape improvement costs, and development fees and charges, in a  
11 total amount not to exceed \$618,932 00, and providing for other mutual benefits, all as  
12 set out in the agreement attached as Exhibit A Exhibit A is incorporated as part of this  
13 ordinance

14 **PART 3.** This ordinance takes effect on \_\_\_\_\_, 2006

15 **PASSED AND APPROVED**

16  
17  
18  
19 \_\_\_\_\_, 2006

20 Will Wynn  
21 Mayor

22  
23  
24 **APPROVED:** \_\_\_\_\_

25 David Allan Smith  
26 City Attorney

27 **ATTEST:** \_\_\_\_\_

28 Shirley A Gentry  
29 City Clerk

Agreement  
By and Between  
The City of Austin  
And  
Ballet Austin, Inc for Fee Reimbursements and  
Streetscape Construction Cost Reimbursements

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THE STATE OF TEXAS    §  
                                  §       KNOW ALL MEN BY THESE  
                                  §       PRESENTS  
COUNTY OF TRAVIS     §

**I**     Introduction

This Agreement is entered into by and between the City of Austin (the “City”), a political subdivision of the State of Texas, and Ballet Austin, Inc (“Ballet Austin”), a Texas non-profit corporation, to provide incentives for the development of property located at 501 West 3rd Street

**II**     Recitals

WHEREAS, Ballet Austin is an established cultural entity that has consistently scored high under the City’s Cultural Contracting program in the areas of artistic excellence and innovation, administrative capability, and economic, cultural, and social impact, and

WHEREAS, Ballet Austin proposes an adaptive remodel of an existing industrial building in downtown Austin, to be used as a headquarters, administrative, educational and rehearsal space for Ballet Austin, in approximately 34,000 square feet of space, and Ballet Austin will construct additional Streetscape Improvements consistent with the City’s “Great Streets” program (the “Project”), and

WHEREAS, Ballet Austin will be able to serve more students in its new facility through Ballet Austin Academy and more children and families through Ballet Austin’s CORE (Community OutReach and Education ) programs, expanding the range and scope of Ballet Austin’s reach into the community, and

WHEREAS, the City wishes to promote and encourage the location of recognized arts and cultural entities in the vicinity of City Hall in order to create a significant cultural presence in the downtown area, and

WHEREAS, the City has evaluated the Proposal submitted by Ballet Austin for the Project and has determined that the Project will benefit the downtown area and further the goal of redeveloping the 2<sup>nd</sup> Street District by adding cultural arts, entertainment, outreach and education opportunities, and

WHEREAS, the City and Ballet Austin, desire to establish the terms and conditions under which Ballet Austin, may receive development fee reimbursements and Streetscape Improvement cost reimbursements for the Project, and

WHEREAS, on November \_\_, 2006, the City Council adopted Ordinance No \_\_\_\_\_, a copy of which is attached hereto as Exhibit A, authorizing the execution of this Agreement

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained in this Agreement, the City and Ballet Austin, agree as follows

### III    Definitions

- 3 01    City means the City of Austin, its representatives, employees, agents, contractors, and consultants
- 3 02    Default means the failure of a party to perform any of its obligations under this Agreement
- 3 03    Ballet Austin means Ballet Austin, its representatives, agents, contractors, employees, and consultants
- 3 04    Building Project means the adaptive remodel of an existing industrial building at 501 West 3rd Street for Ballet Austin headquarters, rehearsal, educational, and administrative uses
- 3 05    Development Fee Reimbursement Amount means development fee reimbursement in an amount not to exceed \$165,877 as authorized in Ordinance No \_\_\_\_\_, and the terms of this Agreement. This amount may include development fees previously paid by Ballet Austin in connection with the Project
- 3 06    Director of Planning means the Director of the Neighborhood Planning and Zoning Department, or its successor department
- 3 07    Force Majeure means, but is not limited to acts of God, strikes, lockouts, and other industrial or labor disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the United States or the State of Texas or any civil or military authority, war, insurrections, riots, or epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, or droughts, arrest and restraint of government or civil disturbances, explosions, breakage, or accidents to equipment, pipelines or canals, complete failure of electrical, water supply, or

wastewater systems, or any other inability of either party that is not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence

- 3 08 Party or parties means the City and Ballet Austin individually or collectively
- 3 09 Project means the proposed adaptive remodel of an existing industrial building at 501 West 3<sup>rd</sup> Street for cultural purposes and the installation of Streetscape Improvements on the abutting section of West 3<sup>rd</sup> Street
- 3 10 Proposal means Ballet Austin's description of the Project described in attached Exhibits B, C, and D Exhibits B-1 and B-2 are proposed site plan documents, Exhibit C-1 and C-2 are first and second floor construction plans, and Exhibit D-1 and D-2 are north, south, east and west exterior elevations
- 3 11 Site Plan means the Site Plan for the Project and any amendments or corrections approved by the City that are consistent with the attached Exhibit B
- 3 12 Streetscape Improvements means the enhanced sidewalk, landscaping and other improvements as described in the Site Plan
- 3 13 Total Streetscape Improvements Cost reimbursement amount means the cost of design and construction of Streetscape Improvements, including the cost of a temporary pedestrian walkway along 3<sup>rd</sup> Street, in an amount not to exceed \$453,055

#### IV Project, Purpose of Agreement, and Consideration

- 4 01 Basis for the Agreement The Project promotes the City's objectives for cultural arts and entertainment facilities and amenities within the Downtown area adjacent to the City Hall, and Great Streets development on downtown streets Ballet Austin's Building Project plans and the Site Plan are fully incorporated into this Agreement as part of the terms, conditions, and consideration for this Agreement
- 4 02 Occupation of Building by Ballet Austin As additional consideration for the fee and cost reimbursements provided by the City under this Agreement, Ballet Austin agrees to occupy and use its facility at 501 West 3<sup>rd</sup> Street as a headquarters, rehearsal, educational and administrative facility for a period of at least twenty (20) years from the Effective Date of the Agreement
- 4 03 Project Property The Project encompasses a portion of West 3<sup>rd</sup> Street right of way, and approximately 0.81 acres of land located at 501 West 3<sup>rd</sup> Street, Austin, Texas, said 0.81 acreage being more particularly described as

Block 23 of the Original City of Austin subdivision, Lots 5 through 8

- 4 04 Project Improvements to be Completed by Ballet Austin To receive the City development fee reimbursements and the Streetscape Improvements cost reimbursements as provided by this Agreement, Ballet Austin shall complete construction of the Project as set out in Sections 4 05 and 4 06
- 4 05 Building Project Ballet Austin shall complete the Building Project in accordance with the architectural building plan and elevations contained in Exhibits C and D, and in full compliance with all applicable City of Austin Land Development Code and technical criteria manual requirements
- 4 06 Streetscape Improvements Ballet Austin shall perform all of the following obligations regarding the Streetscape Improvements
- a Ballet Austin shall complete Streetscape Improvements along West 3<sup>rd</sup> Streets in compliance with the Site Plan contained in Exhibit B, and install a temporary pedestrian walkway, as follows
- 1 construction of an 18-foot wide sidewalk and installation of 4 trees each with a minimum size of five caliper inches measured 4 feet above the sidewalk, and planted along the portion of West 3<sup>rd</sup> Street included in the Project, and
- 2 installation of benches, bicycle racks, waste bins, and light pole bases along the portion of West 3<sup>rd</sup> Street included in the Project, and
- 3 during the construction of the Project, construction and maintenance of a temporary pedestrian walkway along West 3<sup>rd</sup> Street to accommodate public pedestrian traffic, in accordance with City specifications
- b Ballet Austin shall provide complete design, engineering, construction and project management services for the Streetscape Improvements as described in Exhibit "B" in conformance with Great Streets design standards and in accordance with the City's Land Development Code and applicable ordinances, laws, and statutes, as amended, unless otherwise modified by this Agreement Exhibit B consists of Exhibit B-1 which delineates the scope of Streetscape Improvements and Great Streets design elements, and Exhibit B-2 which illustrates the paving pattern Ballet Austin has proposed for installation Provided, however, that the final design of the proposed streetscape improvements and paving pattern is subject to review and approval by City staff, including Neighborhood Planning and Zoning Department and Public Works Department

- c Ballet Austin shall obtain a standard City License Agreement for installations in the public right-of-way covering the installations, construction and trees required for the Streetscape Improvements
- d Ballet Austin shall confirm the location of all underground utilities that may be in conflict with the construction of the Streetscape Improvements, including but not limited to street lighting and traffic signal pole foundations and street trees, prior to commencement of construction and coordinate with underground and overhead utilities for design and relocation, as needed, of utilities in connection with the Streetscape Improvements and comply with the terms and conditions of the City License Agreement for installations in the public right-of-way The City acknowledges that no detailed subsurface utility assessment or engineering has been performed, and that presently unknown subsurface utility conditions may cause an increase in the construction scope and cost because of the tree wells, light posts, or other deep subsurface installations proposed for the Streetscape Improvements If Ballet Austin's subsurface engineering analysis indicates conditions that would otherwise necessitate an increase in cost, the parties may negotiate a change in the scope of the Streetscape Improvements in order to keep the total cost of the Streetscape Improvements within the maximum reimbursement amount set out in Section 4.08
- e Ballet Austin shall obtain all required permits, consents, easements, inspections, tests, and authorizations necessary for construction of the Streetscape Improvements
- f Ballet Austin shall advertise for bids, evaluate bid proposals, and award a contract or contracts for construction of the Streetscape Improvements in accordance with the City's purchasing requirements and process, including but not limited to, compliance with the Minority and Women-owned Business Enterprises (MBE/WBE) Ordinance
- g Ballet Austin shall provide the City with a copy of the construction contract (the "Construction Contract") between Ballet Austin and the contractor(s) chosen by Ballet Austin to construct the Streetscape Improvements (the "Contractor") and any additional documents pertaining to the Construction Contract on or about the commencement date of construction, and thereafter provide the City with copies of any documents amending or replacing any of the Construction Documents
- h Ballet Austin shall maintain commercial liability insurance in an amount not less than \$1,000,000.00 (combined single limit) during the construction of the Streetscape Improvements The insurance shall be written by a company or companies licensed to do business in the State of Texas, at the time the policy is issued, and with AM Best Ratings of

B+VII or better The insurance shall specifically provide that the City is an additional insured under Endorsement CG2010

- i Ballet Austin shall include warranties and insurance requirements in all contracts with contractors for the construction of the Streetscape Improvements Ballet Austin must execute, or cause its contractor to execute, a payment bond, and a performance bond covering the cost of the construction of the improvements contemplated by the Streetscape Improvements to ensure completion of the Streetscape Improvements The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code Ballet Austin shall also require any contractors to obtain, prior to the commencement of construction of the Streetscape Improvements, and maintain throughout construction, Commercial General Liability Insurance, Automobile Insurance, and Worker's Compensation Insurance, with coverage as stipulated in the applicable construction contracts with the contractors All payment and performance bonds issued for the Streetscape Improvements to be reimbursed by the City must contain a dual obligee rider naming the City as a co-obligee
  
- j Ballet Austin shall comply with the terms of any temporary use of right-of-way permit that may be necessary for the Streetscape Improvements
  
- k Ballet Austin shall provide for design and approval of any changes to the Construction Documents by the City, such approval not to be unreasonably withheld, conditioned or delayed and to contact the City's Neighborhood Planning & Zoning Department ("NPZD") within 24 hours of any known construction conflict with the Streetscape Improvements that may cause the location of any streetscape element to shift location by more than 3 inches Ballet Austin agrees to produce, coordinate and evaluate design alternatives for said conflicts at Ballet Austin's sole expense and shall receive NPZD staff approval for any variances from the Streetscape Improvements prior to construction of affected streetscape element
  
- l Upon receipt of notification by the Contractor that the work has been completed pursuant to the Construction Documents, the members of Ballet Austin Design Consultant staff (collectively, the "Engineer") shall conduct an inspection of the Streetscape Improvements As a result of this inspection, Ballet Austin shall prepare or cause to be prepared a list of the items needing correction and direct the Contractor to complete those correction items After the Contractor has performed the required corrections to Ballet Austin satisfaction, Ballet Austin shall notify the City, including the Neighborhood Planning & Zoning Department, in writing that the Streetscape Improvements has been substantially completed according to the Construction Documents and is ready for final inspection by the City and the Engineer The Engineer shall accompany

the City on the final inspection to assure that the Streetscape Improvements has been completed in substantial compliance with the Construction Documents. The Engineer shall review and tabulate all warranties, guarantees, bonds and similar required materials and documents under the Construction Documents to make sure that all such materials and documents are received by Ballet Austin and that they substantially meet the requirements of this Agreement and the Construction Documents, after which Ballet Austin shall assign, and transmit copies or originals as appropriate of such warranties, guarantees and bonds to the City or its designated representative(s). After determining that all requirements of this Agreement and the Construction Documents have been substantially met, the Engineer shall so certify to Ballet Austin and the City and shall recommend approval of the Contractor's final application for payment by the City. The term "substantial completion", as used in this Agreement, shall mean that the Streetscape Improvements has been completed in compliance with this Agreement, and to the point of being usable for the purposes intended, as determined by the City.

- m After substantial completion of the Streetscape Improvements, and as a condition of final acceptance by the City, Ballet Austin shall complete all changes, repairs or alterations reasonably required by the City to comply with the Construction Documents, the requirements of this Agreement, and any applicable laws, within 60 days after notification by the City of deficiencies, or within such other time period as the City and Ballet Austin may agree upon in writing. The City may not declare a default under this Agreement during the cure period stipulated in Section 7.14 as a result of any such defect, unless it is clear that Ballet Austin does not intend to cure the defect within 60 days of notification.
- n As a condition precedent to final acceptance of construction of the Streetscape Improvements by the City, Ballet Austin shall provide the City with one set of reproducible final, record, 'as built' plans for the Streetscape Improvements, at Ballet Austin's sole cost and expense.
- o As a condition precedent to final acceptance of construction of the Streetscape Improvements by the City, Ballet Austin will assign to the City the Contractor's warranty covering the construction for a period of one year after the date of acceptance. The warranty shall be in a form reasonably acceptable to the City. In addition to any other rights the City has pursuant to the warranty, the City may require reconstruction of any portion of the Streetscape Improvements under warranty if construction is not in accordance with the design specifications of the Construction Documents.

- p After (1) obtaining an executed City License Agreement, (2) issuance of a final Certificate of Occupancy, and (3) final acceptance of the Streetscape Improvements by the City, Ballet Austin will provide verification of the cost of the Streetscape Improvements to the Neighborhood Planning & Zoning Department (NPZD) in the form of a summary invoice of the costs of the Streetscape Improvements prepared by Ballet Austin, a copy of the General Contractor's Payment Application and related subcontractor invoices
- q Ballet Austin shall provide digital photo-documentation before, during and after completion of the Streetscape Improvements. This documentation shall convey overall context of sidewalk, including building, sidewalk and street from the viewpoint of a pedestrian, along each street frontage, and detailed installation of pole foundations, tree plantings and sidewalk pavers, and shall be rendered in "JPEG" format to NPZD
- r Ballet Austin shall pay all costs of the Streetscape Improvements not required to be reimbursed to Ballet Austin by the City in this Agreement in order to complete the Streetscape Improvements in accordance with Exhibit "B"
- s Ballet Austin may install individual pavers in the sidewalk which are engraved with the names of Ballet Austin donors. Ballet Austin shall require that the paver subcontractor submit unit pricing for the material cost of each type of paver. At the completion of the Streetscape Improvements, a count of the number of engraved pavers actually installed will be made. The amount reimbursable by the City will be the total cost of all paving units less the cost of all engraved paving units. The Ballet shall contract and pay for paver engraving separately and these costs shall not be eligible for reimbursement

#### 4.07 Project Development Fee Reimbursements

- a In consideration for completion of the Project in accordance with this Agreement by Ballet Austin, the City will reimburse the following fees in a total amount not to exceed \$165,877 (development fee reimbursement amount), as authorized by Ord \_\_\_\_\_
  - 1) Temporary use of right-of-way permit fees in an amount not to exceed \$102,665
  - 2) Right-of-way excavation permit fees in an amount not to exceed \$5,030
  - 3) Driveway permit fees in an amount not to exceed \$160
  - 4) Site plan fees in an amount not to exceed \$330

- 5) Building plan review fees in an amount not to exceed \$5,003
- 6) Building permit fees, including mechanical, plumbing and electrical permit fees, in an amount not to exceed \$26,364
- 7) Austin fire department final inspection fees in an amount not to exceed \$55
- 8) Temporary certificate of occupancy fee in an amount not to exceed \$750
- 9) Sign review and permit fees in an amount not to exceed \$345
- 10) License agreement application fee in an amount not to exceed \$425
- 11) Construction inspection fees for infrastructure in the right-of-way in an amount not to exceed \$22,500
- 12) Water meter capital recovery fee in an amount not to exceed \$500
- 13) Water meter inspection fee in an amount not to exceed \$1,750

Fees attributable to the Streetscape Improvements are also eligible for reimbursement under this Section. If a fee or payment identified in this Section 4.05 a has been previously paid to the City, the City shall refund the fee in accordance with Section 4.05 b below.

- b. Following substantial completion of the Project, and City acceptance of Streetscape Improvements, the City shall reimburse development fee costs to Ballet Austin before the 46<sup>th</sup> day after the City receives the following information from Ballet Austin:
  - 1) written receipts showing the amounts paid and the name of the party making the payment, and
  - 2) if a party other than Ballet Austin paid the amount to the City, written authorization from the other party to reimburse the amount to Ballet Austin.
- c. Reallocation of Fee Reimbursements. So long as the total amount of fee or payment reimbursements described above does not exceed \$165,877, the individual amounts specified within each category of fees identified in Ord. No. \_\_\_\_\_ may be reallocated from time to time within the same category, subject to approval by the City Economic Growth and Redevelopment Services Office, if Ballet Austin gives written notice to City specifying the manner in which Ballet Austin wishes to reallocate the fee or payment reimbursements. The Parties acknowledge that certain sources of City funding may be restricted to specifically allocated purposes, and that to the extent the use of specific funds is limited, the City may deny a request to reallocate.

4 08 Streetscape Improvements Cost Reimbursement

- a In consideration for completion of the Streetscape Improvements in accordance with this Agreement by Ballet Austin, Ballet Austin shall not be required to post fiscal or provide any other security for construction of Streetscape Improvements, and the City will reimburse the following costs of the Streetscape Improvements in a total amount not to exceed \$453,055, all as authorized by Ordinance No \_\_\_\_\_
  - 1) costs of materials and construction of the Streetscape Improvements, including the cost of a temporary pedestrian walkway along 3<sup>rd</sup> Street, and including the cost of performance bonds and insurance, as agreed to in the contract for Streetscape Improvements between Ballet Austin and the Contractor
  - 2) costs of professional design and engineering services for the Streetscape Improvements
- b Following substantial completion of the Project, and City acceptance of Streetscape Improvements, the City shall reimburse Streetscape Improvement construction costs to Ballet Austin before the 46<sup>th</sup> day after the City receives the following information from Ballet Austin
  - 1) written receipts showing the amounts paid and the name of the party making the payment, and
  - 2) if a party other than Ballet Austin paid the amount to the City, written authorization from the other party to reimburse the amount to Ballet Austin
- c The total costs to be reimbursed under this Section may not exceed \$453,055

4 09 Annual License Fee, City Garage Parking Validation, Waste Disposal Fees

- a The City shall charge an annual license agreement fee of \$1 for the term of this Agreement
- b In the event that the City elects to commence charging for public parking in the City Hall parking garage, for the term of this Agreement, the City shall accept Ballet Austin visitor parking validations in lieu of parking fees, for a period of up to two hours for each visitor vehicle, between the hours of 8 00 a m and 5 p m This section shall not be construed as a guarantee of parking availability, and parking spaces are on a first-come first-served basis and limited to those spaces available to the general public

c The City will provide waste management and landfill disposal services for construction debris in an amount not to exceed \$740

4 10 Covenants and Conditions The provision of fee and cost reimbursements is contingent on compliance by Ballet Austin with all of the covenants and conditions in this Agreement

V. Effective Date, Term Renewals, and Voluntary Termination

5 01 Effective Date The Effective Date of this Agreement is the last date of execution of the Agreement by the Parties or their duly authorized representatives

5 02 Term This Agreement shall terminate twenty years after the Effective Date of this Agreement unless amended under the provisions of Section 7 14

5 03 Completion Deadline If Ballet Austin fails to complete all of the Project within three years after the Effective Date of this Agreement, the uncompleted improvements shall be considered to be rejected and Ballet Austin will not be eligible for development fee reimbursements and Streetscape Improvements cost reimbursements under this Agreement

5 04 Voluntary Termination Notwithstanding any provision in this Agreement regarding default, Ballet Austin may voluntarily terminate this Agreement with respect to all or any part of the Project improvements by providing written notice to the City on or before the 30<sup>th</sup> day before the proposed date of termination If Ballet Austin elects to terminate this Agreement under this provision, Ballet Austin will not be eligible for development fee reimbursements and Streetscape Improvements cost reimbursements, and will reimburse the City for all previously received development fee reimbursements

VI Compliance with Applicable Laws and Regulations

6 01 Applicable Laws and Regulations This Agreement is subject to all applicable laws and regulations of the City, County, State, and the United States as amended from time to time

6 02 Compliance with the Law The Parties will comply with all applicable laws and regulations of the City, County, State, and the United States as amended from time to time Ballet Austin will secure all necessary permits and grants of authority to complete the Project The reimbursement of development fees or Streetscape Improvements costs under this Agreement does not constitute a grant of any permit or authority by the City

VII Miscellaneous Provisions

7 01 Covenant of Good Faith and Fair Dealing The City and Ballet Austin agree to cooperate and to deal with one another fairly and in good faith at all times to effectuate the purposes and intent of this Agreement

7 02 Notice

- a A notice required, given, made, or accepted under this Agreement, must be in writing
  
- c Notice may be given or served
  - 1) by depositing the notice in the United States mail, postage paid, certified, and addressed to the party to be notified with return receipt requested,
  - 2) by depositing the same with a courier service, with appropriate proof of receipt by the party to be notified,
  - 3) by sending the notice by telefax (subject to electronic confirmation) with confirming copy sent by mail
  
- c For the purpose of notice, the addresses of the parties will be as follows until changed as provided in this Agreement

BALLET AUSTIN

(NEED ADDRESS)

CITY Sue Edwards, Director  
Economic Growth and Redevelopment Service Office  
City of Austin  
301 W 2<sup>nd</sup> St , Suite 2030  
(P O Box 1088, Austin, Texas 78767)  
Austin, Texas 78701  
FAX (512) 974-7825

- d Notice given in the manner indicated in Subsection 7 02 b is effective on the day of receipt
  
- f An address for the purpose of notice under this Agreement may be changed by giving notice of the new address to the other Party on or before the fifth day before the Effective Date of the address change

7 03 Counting Rule If a date or time period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day

7 04 Severability The provisions of this Agreement are severable If a provision or the application of a provision of this Agreement to a person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the Agreement and its application to other persons or circumstances will not be affected In this event, this Agreement shall be construed as though the invalid or unconstitutional portion is not present in the Agreement

7 05 Indemnification Ballet Austin will defend, indemnify and hold the City harmless from any and all liability, suits, claims, or actions of any kind, including related costs and fees, for personal injury or death or property damage arising out of or connected in any way to the design and construction of the Project or its use, as described above

7 06 Entire Agreement This Agreement, including all exhibits, constitutes the entire Agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior or contemporaneous Agreements, representations, covenants, or warranties regarding the subject matter of the Agreement, whether oral or in writing This Agreement is separate from and does not constitute an amendment or modification of any other Agreement between the Parties The exhibits attached to and incorporated in this Agreement for all purposes consist of the following

7 07 No Third Party Beneficiaries Except for any assignee of Ballet Austin permitted by Section 7 10 of this Agreement, nothing in this Agreement will be construed to confer any right, privilege, or benefit on any person or entity not a Party to the Agreement Nothing in this Agreement will otherwise create any vested right or third party beneficiary relationship

7 08 Legal Construction, Performance This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties are performable in Travis County, Texas

7 09 Venue Venue for any cause of action arising under this Agreement is in Travis County, Texas

7 10 Assignment Except as hereafter provided, Ballet Austin may not assign its rights or obligations under this Agreement to any person or entity without the prior written consent of the City Manager Ballet Austin may assign its rights and obligations under this Agreement, without the prior consent of the City Manager or any other party, (i) to a partnership, joint venture, corporation, or other entity in which Ballet Austin or any party controlling, controlled by, or under common control with Ballet Austin, is a general partner or joint venturer, or exercises managerial control, or (ii) to a partnership, joint venture, corporation, or other entity controlling, controlled by, or under common control

with Ballet Austin. The assignment shall not be effective, however, until and unless the City is given written notice of the assignment as provided in Section 7.02 of this Agreement. Provided however, that Ballet Austin agrees that it shall not assign its rights and obligations under this Agreement to any other entity if such assignment would have the effect of nullifying Ballet Austin's obligation to the City under Section 4.02 above.

7.11 Interpretation. Except where the context otherwise clearly requires, in this Agreement:

- a. Words imparting the singular will include the plural and vice versa,
- b. References to any document mean that document as amended or as supplemented from time to time, and references to any party mean that party, its successors, and assigns.

7.12 Construction in Favor of One Party or the Other. The Parties acknowledge that this Agreement is voluntary and consensual on the part of each Party. Each Party has fully participated in the negotiation, formulation, drafting, and approval of this Agreement and has been represented by legal counsel of the Party's own choosing. If there is any ambiguity, the provisions of this Agreement are not to be construed for or against either Party.

7.13 Duplicate Originals. This Agreement may be executed in duplicate originals, each of which shall be of equal dignity.

7.14 Notice of Default, Opportunity to Cure. Should either Party allege that the other has committed a Default, it will provide at least 30 days Notice to the other Party specifying the nature of the Default and provide the other Party a reasonable opportunity to cure the Default before exercising any legal or equitable remedy related to the Default.

7.15 Amendment. No Amendment of this Agreement is effective, unless the Amendment has been reduced to writing, each Party has duly approved the Amendment, and the Amendment is executed by the authorized representatives of the Parties.

7.16 Other Instruments or Actions. The Parties agree that they will take all further actions and execute and deliver any other consents, authorizations, instruments, or documents necessary or incidental to achieve the purposes of this Agreement. The City is not obligated under this provision to issue any permits or approvals unless Ballet Austin has fully complied with all applicable City laws and regulations and the covenants and conditions of this Agreement.

7.17 No Joint Venture, Partnership or Agency. This Agreement will not be construed to establish a partnership, joint venture, or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties.

7 18 Force Majeure If either Party is rendered unable by Force Majeure to fulfill any or all of its obligations under this Agreement, the obligations of that Party, to the extent affected by the Force Majeure, shall be suspended during the continuance of the inability

- a The Party experiencing the Force Majeure must exercise due diligence to resume performance at the earliest practicable time and must provide Notice to the other Party as soon as reasonably possible after the occurrence of the Force Majeure
- b The Notice must contain the full particulars of the Force Majeure
- c The requirement that any Force Majeure be remedied with due diligence does not require the settlement of strikes, lockouts, and other industrial or labor disturbances by acceding to the demands involved in those matters

7 19 Incorporation of Exhibits Exhibits A, B, C and D attached to this Agreement are incorporated into this Agreement as if fully set out herein

CITY OF AUSTIN

By \_\_\_\_\_  
Laura Huffman,  
Assistant City Manager

Date \_\_\_\_\_

STATE OF TEXAS           §  
                                          §  
COUNTY OF TRAVIS       §

This AGREEMENT was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2006, by Laura Huffman, Assistant City Manager of the City of Austin, a Texas home rule city and municipal corporation, on behalf of said city

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires \_\_\_\_\_

Ballet Austin  
A Texas Non-Profit corporation

By

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This AGREEMENT was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ of \_\_\_\_\_,

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires \_\_\_\_\_

EXHIBIT A  
ORDINANCE NO  
(to be attached)





15 15

- RECALL: 0112  
1. SEE ARCHITECTURAL FLOOR PLAN FOR FINISH  
2. FINISHES SHALL BE IDENTIFIED AS SUCH  
3. ALL FINISHINGS TO BE ALTERNATE 'R'

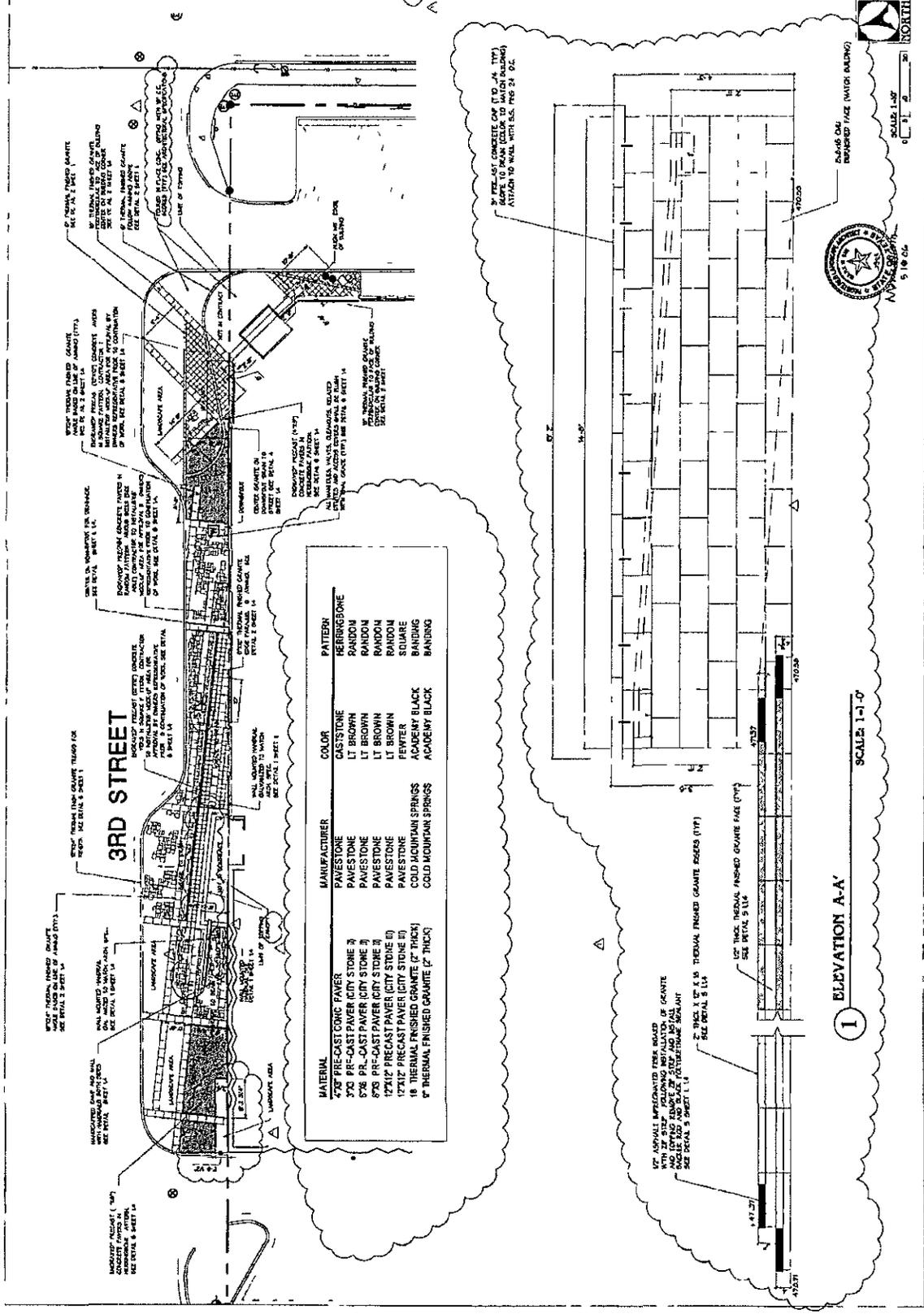
5-22 2008 ISSUE FOR ADDENDUM 1

DATE: 05/15/08  
SCALE: AS SHOWN  
PROJECT: 08-001  
SHEET: 08-001-01  
DATE: 05/15/08

Horoscope  
Plan

SHEET NUMBER

L1.3



MATERIAL	MANUFACTURER	COLOR	PATTERN
4" PRE-CAST CONCRETE PAVEMENT	PAVESTONE	CAS STONE	SEBERSTONE
3" PRE-CAST PAVEMENT (CITY STONE II)	PAVESTONE	LT BROWN	RANDOM
3" PRE-CAST PAVEMENT (CITY STONE II)	PAVESTONE	LT BROWN	RANDOM
12"X12" PRE-CAST PAVEMENT (CITY STONE II)	PAVESTONE	LT BROWN	RANDOM
12"X12" PRE-CAST PAVEMENT (CITY STONE II)	PAVESTONE	FEWTER	SQUARE
18" THERMAL FINISHED GRANITE (2" THICK)	COLD MOUNTAIN SPRINGS	ACADEMY BLACK	BANDING
6" THERMAL FINISHED GRANITE (2" THICK)	COLD MOUNTAIN SPRINGS	ACADEMY BLACK	BANDING

1 ELEVATION A-A

SCALE 1/4" = 1'-0"

SCALE 1/8" = 1'-0"









